

In the District Court of the United States

For the Northern District of New York

THE UNITED STATES OF AMERICA

-vs-

BRISTOL-MYERS SQUIBB COMPANY

U.S. DISTRICT COURT N.D. OF N.Y. FILED		No.
APR 24 1992		
AT	Defendant	M
GEORGE A. RAY, CLERK SYRACUSE		

92-CR-123

COE 7
I certify that
This is a true copy
Attest 4/21/92
GEORGE A. RAY
Clerk U.S. District Court
By: *[Signature]*
Deputy

PLEA AGREEMENT IN A CRIMINAL CASE

The United States of America, by Gary L. Sharpe, United States Attorney for the Northern District of New York, and Craig A. Benedict, Assistant United States Attorney, the State of New York by Robert Abrams, Attorney General for the State of New York and Andrea Schillaci, New York State Assistant Attorney General, and the defendant, BRISTOL-MYERS SQUIBB COMPANY, hereby enter into the following agreement regarding the disposition of anticipated criminal charges contained in an Information relating to operations at the BRISTOL-MYERS SQUIBB COMPANY facility located on Thompson Road in the Village of East Syracuse and Town of Dewitt, New York (the Facility) to be filed in conjunction with this Plea Agreement:

1. BRISTOL-MYERS SQUIBB COMPANY acknowledges that it has had the assistance of counsel in connection with the matters that are the subject of this Plea Agreement and has authorized counsel

to witness and approve this agreement on behalf of BRISTOL-MYERS SQUIBB COMPANY through their signatures below.

2. In exchange for the considerations by the United States and State of New York, stated below, BRISTOL-MYERS SQUIBB COMPANY agrees as follows:

a. BRISTOL-MYERS SQUIBB COMPANY will enter a plea of guilty to four counts of an Information which will charge it with the illegal disposal of pollutants into waters of the United States and the illegal disposal of pollutants into a publicly owned treatment works, in violation of the Clean Water Act (CWA), Title 33, United States Code, Sections 1311(a), 1317 and 1319(c)(1).

i. The parties agree that immediately following the entry of the guilty plea by BRISTOL-MYERS SQUIBB COMPANY, and the acceptance by the Court thereof, the defendant shall be sentenced in accordance with the provisions of Fed. R. Crim. P. 11(e)(1)(C), to the following:

b. BRISTOL-MYERS SQUIBB COMPANY shall pay a fine of three million five hundred thousand dollars (\$3,500,000.00) or eight hundred seventy five thousand dollars (\$875,000.00) for each count, pursuant to Title 18, United States Code, Section 3571(d).

i. The parties agree that three million dollars (\$3,000,000.00) of the three and one-half million dollar fine, shall be suspended upon the condition that BRISTOL-MYERS SQUIBB COMPANY be directed to pay, and shall pay, three million dollars

(\$3,000,000.00) to the State of New York, an aggrieved party, as restitution. Such monies shall be paid as follows: one million seven hundred and fifty thousand dollars (\$1,750,000.00) shall be paid to the State of New York for deposit into the New York Department of Environmental Conservation "Environmental Enforcement Account", one million two hundred and fifty thousand dollars (\$1,250,000.00) shall be paid to the State of New York for deposit into the New York Department of Environmental Conservation "Environmental Monitoring Account". BRISTOL-MYERS SQUIBB COMPANY agrees that it shall not seek a Federal or State tax deduction for any amount of the three and one half million dollars paid pursuant to this agreement. At no time shall BRISTOL-MYERS SQUIBB COMPANY assert as an offset, or in any other way seek credit in any future litigation which may occur, for any of the monies paid to the United States or the State of New York under this Agreement.

c. BRISTOL-MYERS SQUIBB COMPANY agrees that there is a legal basis for the Court to impose the restitution called for in this agreement as damages recoverable for compensatory purposes by New York State including the cost of investigation and prosecution.

d. Pretreatment Facility: The parties further agree that, in exchange for the considerations set out in this Plea Agreement, BRISTOL-MYERS SQUIBB COMPANY shall build and place into operation by December 31, 1996 a pretreatment facility which shall utilize state of the art technology to treat all of its

wastewater associated with industrial activity which is discharged to the Onondaga County Publicly Owned Treatment Works (POTW) including, but not limited to, nitrogen, phosphorus, Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), and solvents, at a cost of up to \$30,000,000.00 but in no event less than \$10,000,000.00. BRISTOL-MYERS SQUIBB COMPANY shall select the most appropriate design choice as demonstrated by its pretreatment study to most effectively reduce its wastewater pollutant discharge regardless of the cost, up to \$30,000,000.00.

e. Force Majeure: BRISTOL-MYERS SQUIBB COMPANY shall comply with the provisions of paragraph 2(d) above provided, however, that if work to be performed pursuant to this Plea Agreement is delayed by an act of God, an act of war, the failure of any permitting authority to issue necessary permits or approvals after timely and appropriate submission of an application with all necessary supporting data, or events which the United States and State of New York agree in writing were beyond the reasonable control of BRISTOL-MYERS SQUIBB COMPANY and the companies with whom it hires for the construction of a pretreatment facility project, then the date for completing construction of the pretreatment facility shall be extended by the period of the force majeure event. Within ten days of the occurrence of a force majeure event BRISTOL-MYERS SQUIBB COMPANY shall notify the United States and State of New York in writing of the precise nature and extent of the event, and, thereafter, as soon as possible, provide written notification of the total

period of delay. The United States and State of New York shall exercise good faith in any decision declining to extend the force majeure period where they determine events were not beyond the reasonable control of BRISTOL-MYERS SQUIBB COMPANY and companies which it hires for the construction of the pretreatment facility.

f. In the event that BRISTOL-MYERS SQUIBB COMPANY does not build and operate the pretreatment plant described in paragraph 2(d) above, at a construction cost of at least \$10,000,000.00 by December 31, 1996 or the later force majeure date, BRISTOL-MYERS SQUIBB COMPANY shall pay to the United States and the State of New York a penalty of two thousand seven hundred and forty dollars (\$2,740.00) per day, to be divided evenly between the United States and State of New York, starting on the first day of violation until such time as the pretreatment plant is placed into operation.

g. Specific Performance: In the event that BRISTOL-MYERS SQUIBB COMPANY does not build and operate the pretreatment plant described in paragraph 2(d), at a construction cost of at least \$10,000,000.00 by December 31, 1996 or the later force majeure date, the parties agree that the United States and State of New York may seek and obtain specific performance or any other appropriate relief provided for by law from the Court. The parties agree that such relief shall not include monetary penalties beyond those set forth in this Agreement for the failure to build on time, and for the agreed upon minimum amount, the pretreatment facility. BRISTOL-MYERS SQUIBB COMPANY shall

take no legal action or raise any defense of any nature whatsoever, other than force majeure as set out in paragraph 2(e) above, to preclude the obtaining of an order for specific performance or any other relief necessary to the enforcement of the terms of this Plea Agreement. In this regard, the parties stipulate that the Plea Agreement shall be admissible in any such legal action and shall constitute a binding admission as proof of the parties agreement and obligation, notwithstanding Federal Rule of Criminal Procedure 11(e) and Federal Rule of Evidence 410 or any other legal provision.

h. If BRISTOL-MYERS SQUIBB COMPANY ceases the discharge of wastewaters associated with industrial activity from its Thompson Road Facility to the POTW prior to the December 31, 1996 completion date or a later force majeure date, then the pretreatment construction obligations pursuant to paragraphs 2(d), 2(f), and 2(g) will be suspended. In these circumstances, BRISTOL-MYERS SQUIBB COMPANY will comply with the requirement to build a pretreatment facility as set forth in paragraph 2(d) before it re-commences the discharge of wastewater associated with industrial activity from its Thompson Road Facility after December 31, 1996 or the later force majeure date.

3. In consideration of the guilty pleas to be entered, the United States and State of New York agree not to seek additional criminal charges against BRISTOL-MYERS SQUIBB COMPANY, or any of its present or former officers, directors or employees, for any violation of federal or state law related to this investigation

which may have occurred at its Thompson Road, Syracuse, New York Facility up to the date of this agreement and which is currently known to the United States and the State of New York. In this regard, such present and former officers, directors and employees shall be deemed third party beneficiaries of this Agreement.

4. Nothing in this Plea Agreement including paragraph 2(d) shall relieve BRISTOL-MYERS SQUIBB COMPANY from complying with all Federal, State and local laws.

5. BRISTOL-MYERS SQUIBB COMPANY agrees that it shall not attempt nor be permitted to withdraw its Plea of guilty.

6. BRISTOL-MYERS SQUIBB COMPANY understands that for each count set forth in the Information it will be required to pay a mandatory special assessment of \$125.00, pursuant to Title 18, United States Code, Section 3013 in addition to the monies set forth in paragraph 2(b) above.

7. BRISTOL-MYERS SQUIBB COMPANY acknowledges that this agreement is limited to the United States Attorney's Office for the Northern District of New York and the State of New York and cannot bind any other federal authorities outside of the Northern District of New York or bind any state or local prosecuting authorities outside of the State of New York.

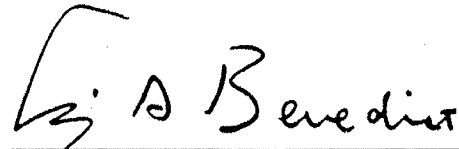
8. BRISTOL-MYERS SQUIBB COMPANY acknowledges that nothing in this Agreement shall preclude the United States from taking debarment or listing action against the Company's Thompson Road Facility as a result of the guilty pleas entered into in this case, and no promises or agreements have been entered into

regarding the removal of BRISTOL-MYERS SQUIBB COMPANY'S Thompson Road Facility from such debarment or listing.

9. The parties expressly understand that this document contains the complete agreement between the parties, that there are no additional promises, representations, agreements, or conditions other than those set forth herein, and that this agreement will not be amended or modified unless in writing signed by all parties.


GARY L. SHARPE
United States Attorney

Dated: 4/22, 1992 By:

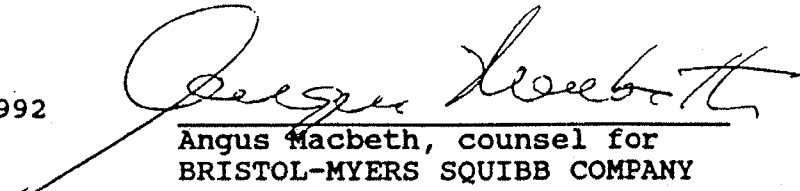

Craig A. Benedict
Assistant U. S. Attorney

ROBERT ABRAMS
New York State Attorney
General

Dated: 4-24, 1992 By:


Andrea Schillaci
Special Assistant U.S.
Attorney
Assistant Attorney General on
behalf of New York State

Dated: 4/20, 1992


Angus Macbeth, counsel for
BRISTOL-MYERS SQUIBB COMPANY

Dated: April 20, 1992

Donald A. Carr
Donald A. Carr, counsel for
BRISTOL-MYERS SQUIBB COMPANY

Dated: April 21, 1992

George H. Lowe
George H. Lowe, counsel for
BRISTOL-MYERS SQUIBB COMPANY

No. 92-CR-

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GARY L. SHARPE

United States Attorney, NDNY
Federal Building, 9th Floor
Syracuse, New York 13260

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By , Deputy.

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BRISTOL-MYERS SQUIBB COMPANY

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AT Defendant.
GEORGE A. RAY

No. 92-CR-123

I N F O R M A T I O N

33 USC § 1317
33 USC § 1319(c)(1)
33 USC § 1311(a)

COPY

I certify that
This is a true copy

THE UNITED STATES ATTORNEY CHARGES: Attest 4/27/92

GEORGE A. RAY

Clerk, U.S. District Court

By: [Signature]
Deputy

COUNT I

On or about September, 1987, in the Northern District of New York the

BRISTOL-MYERS SQUIBB COMPANY

negligently discharged industrial wastewater into the Onondaga County publicly owned treatment works with such discharge having a pH concentration as low as 1.70 in violation of its Industrial Wastewater Discharge Permit and the Clean Water Act.

In violation of 33 U.S.C. §§ 1317 and 1319(c)(1).

THE UNITED STATES ATTORNEY FURTHER CHARGES:

COUNT II

On or about October, 1987, in the Northern District of New York the

BRISTOL-MYERS SQUIBB COMPANY

negligently discharged industrial wastewater into the Onondaga County publicly owned treatment works with such discharge having a pH concentration as low as 2.92 in violation of its Industrial Wastewater Discharge Permit and the Clean Water Act.

In violation of 33 U.S.C. §§ 1317 and 1319(c)(1).

THE UNITED STATES ATTORNEY FURTHER CHARGES:

COUNT III

On or about March, 1990, in the Northern District of New York the

BRISTOL-MYERS SQUIBB COMPANY

negligently discharged industrial wastewater containing pollutants including, but not limited to, methylisobutylketone (MIBK), acetone, and condensate into a water of the United States from a point source without having obtained a State Pollutant Discharge Elimination System (SPDES) permit.

In violation of 33 U.S.C. §§ 1311(a) and 1319(c)(1).

THE UNITED STATES ATTORNEY FURTHER CHARGES:

COUNT IV

On or about March, 1990, in the Northern District of New York the

BRISTOL-MYERS SQUIBB COMPANY

negligently discharged industrial wastewater containing pollutants including, but not limited to, methylisobutylketone

(MIBK), acetone, and condensate into a water of the United States from a point source without having obtained a State Pollutant Discharge Elimination System (SPDES) permit.

In violation of 33 U.S.C. §§ 1311(a) and 1319(c)(1).

GARY L. SHARPE
United States Attorney

By: 

Craig A. Benedict
Assistant U.S. Attorney

By: 

Andrea Schillaci
Special Assistant U.S. Attorney

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INFORMATION

GARY L. SHARPE
United States Attorney, NDNY
Federal Building, 9th Floor
Syracuse, New York 13260

Filed....., 19.....

....., Clerk.

By....., Deputy.

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